IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4514 OF 2004

Nizamuddin Abdul Rauf Khan ... Applicant

versus

The State of Maharashtra ... Respondent

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Mr.A.P. Mundargi, with Mr. Hitendra Mishra, for the Applicant.

Mr.K.V. Saste, A.P.P., for the Respondent.

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CORAM : A.M.KHANWILKAR,J.

24th February 2005

P.C.:

. Heard Counsel for the parties. Perused the record. The Applicant is accused No.3 named in the original CR.No.48/2001 registered with Oshiwara Police Station, then transferred to D.C.B.C.I.D. as Cr.No. 52/2001. The prosecution case is that the Applicant and other accused were involved in contract killing of Ajit

Tikamdas Divani That person was murdered on 30th June 2001. The Applicant along with the co-accused came to be arrested on 8th July 2001 while they were travelling in a vehicle, which had fake number plate. All the accused were arrested on the spot and during the search of the vehicle and of the accused, Star Make pistol was recovered from the co-accused Upendra. Besides the fake number plate on the vehicle, which was displayed, another fake number plate was recovered from the vehicle. The vehicle was intercepted on the basis of prior information received by the police. After arrest, during investigation, the prosecution has collected evidence to indicate complicity of the Applicant in the commission of the crime. During the investigation, statement of Chotalal Joshi has been recorded, who is well acquainted with Abu Salem, the prime accused, who is reported to be absconding. Chotalal Joshi has disclosed the telephone numbers of Abu Salem. Statement of brother of the Applicant has also been recorded, who has stated that the Applicant has purchased property owned by one Bachanu Yadav. There is telephone number in the said property bearing No.

6349891, which stands in the name of said Bachanu Yadav. There is record to indicate that the Applicant was in contact with Abu Salem, which fact is established from the statement furnished by V.S.N.L. to the Deputy Commissioner of Police (Detection), Crime Branch, C.I.D., along with letter dated 29th October 2001. Besides, the booth owners of public telephones have also deposed that the Applicant was frequenting on their booths to make STD calls. Even accepting the argument of the Applicant that that statement does not take the matter any further, but, as mentioned earlier, there is evidence already collected to indicate that the Applicant was in contact with Abu Salem from telephone No. 6349891, which was in his exclusive use. In addition to that material, reliance is placed on the confessional statement of co-accused, which is admissible and can be used against co-accused and abettor by virtue of section 18 of the M.C.O.C.Act. The said statement discloses that the Applicant had supplied weapon, which has been recovered from the offender during the raid. Besides, the statement of co-accused discloses that the Applicant had shown place of incident to

the co-accused. Taking the totality of all the materials on record, as referred to earlier, there are strong circumstances to indicate the complicity of the Applicant in the commission of the crime. On this finding, it is not possible to consider the prayer for bail of the Applicant in view of bar under section 21(4) of the Act. If it is so, I see no basis to depart from the conclusion reached by the Court below while rejecting the first bail application preferred by the Applicant on merits by order dated 23rd July 2002. Hence, this application should fail. The same is dismissed.

. As bail application is rejected and the Applicant is in custody since July 2001, the trial of the case is expedited, to be finally disposed of preferably within six months from the receipt of writ of this Court.

. It is brought to my notice that the Judge of the trial Court has already expressed his inability to proceed with the trial as he is presently engaged with specially expedited matter by the Apex Court. If it is so, on a formal

application being moved by the Applicant, the Principal Judge, Sessions Court for Greater Mumbai, may pass appropriate orders so as to ensure that the trial of this case is assigned to the Special Judge, who would be able to dispose of the same within six months, as the same is pending since 2001 and the accused are in jail.

. Needless to observe that the trial Court will decide the case on its own merits in accordance with law uninfluenced by any observation made in this order, which is only prima facie opinion for considering the prayer for bail.

(A.M.KHANWILKAR,J.)